

Message Text

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ACTION ARA-10

INFO OCT-01 ISO-00 EB-07 L-03 COME-00 FMC-01 TRSE-00 STR-04

CIAE-00 DODE-00 DOTE-00 INR-07 NSAE-00 CG-00 OFA-01

DLOS-04 ARAE-00 SSO-00 NSCE-00 INRE-00 USIE-00 PA-01

PRS-01 XMB-02 AGR-05 CEA-01 FRB-03 H-02 INT-05 LAB-04

NSC-05 AID-05 CIEP-01 SS-15 TAR-01 USIA-06 SP-02

FEAE-00 OMB-01 /098 W

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FM AMEMBASSY GUATEMALA

TO SECSTATE WASHDC IMMEDIATE 8589

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PASS EXIM AND MARAD/USDOC

E.O. 11652: N/A

TAGS: EWWT GT

SUBJECT: DELTA/FLOMERCA DISPUTE - A NEW DIMENSION

REF: GUATEMALA 5199

SUMMARY: IN CONTINUED PURSUIT OF ALL CARGO TO GUATEMALA WHICH IT CAN GET, DELTA HAS REPORTEDLY THREATENED TO APPLY FOR ANNULMENT OF WAIVER FROM 100 PERCENT US SHIPPING REQUIREMENT WHICH EXMIBAL ENJOYS ON EXIM-FINANCED CARGO IMPORTED HERE. EXMIBAL NOW USING CCT AND FLOMERCA TRAILER SERVICE (NON-US-FLAG) OUT OF MIAMI; CLAIMS IT WILL SUFFER FINANCIAL LOSS AND FURTHER DELAY IN COMPLETION PROJECT IF OBLIGED TO SHIP AMERICAN VIA DELTA. IF DELTA APPLIES FOR ANNULMENT, EXMIBAL MAY ASK HEARING BEFORE MARITIME ADMINISTRATION AND ARGUE THAT REASONABLE PARTICIPATION ALREADY ALLOWED US CARRIERS IN IMPORT TO/EXPORT FROM GUATEMALA AND THERFORE WAIVER IN EXMIBAL CASE

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SHOULD BE ALLOWED TO STAND. END SUMMARY

1. JOSEPH BORGATTI, PRESIDENT, EXMIBAL (LARGE NICKEL PLANT UNDER CONSTRUCTION ON LAKE IZABAL), HAS INFORMED EMBASSY THAT DELTA LANDRY, ASSISTANT VICE PRESIDENT, DELTA, VISITED SAN MATEO, CALIFORNIA HEADQUARTERS MCKEE ACONSTRUCTION, WHO BUILDING EXMIBAL PLANT, ON OCTOBER 7 AND ADVISED THAT DELTA WAS MAKING APPLICATION TO MARITIME ADMINISTRATION, DEPARTMENT OF COMMERCE, TO CANCEL CURRENT WAIVER GRANTED EXMIBAL ON REQUIREMENT TO USE US-FLAG VESSELS TO CARRY EXIM-FINANCED CARGO FROM US TO GUATEMALA. LANDRY SO ADVISED MCKEE IN EFFORT TO PERSUADE MCKEE/EXMIBAL TO SHIFT TRANSPORT OF CARGO FROM CCT AND FLOMERCA TRAILER SERVICE OUT OF MIAMI TO DELTA OUT OF NEW ORLEANS.

2. BORGATTI SHOWED COPY OF LETTER, SEPTEMBER 3, 1973, FROM DIRECTOR, OFFICE OF MARKET DEVELOPMENT, MARITIME ADMINISTRATION, TO AREA FINANCE MANAGER, NEW YORK, OF INTERNATIONAL MICKEL CO. OF CANADA (INCO IS 80 PERCENT PARTNER WITH HANNA MINING OF CLEVELAND IN EXMIBAL). LETTER GRANTED BLANKET STATUTORY WAIVER ON US-FLAG SHIPPING ON TRANSPORT EQUIPMENT FINANCED UNDER \$13.5 MILLION EXIM LOAN TO EXMIBAL "IN VIEW OF CURRENT LACK OF US-FLAG SERVICE TO GUATEMALA". BORGATTI ADVISED NO OTHER WAIVER SINCE GRANTED. EXMIBAL HAS BEEN SUBMITTING REGULARLY TO MARITIME ADMINISTRATION THE REQUIRED MONTHLY REPORTS ON SHIPMENTS MADE.

3. EXMIBAL VERY MUCH CONCERNED ABOUT POSSIBLE CANCELLATION OF WAIVER SINCE HAS WORKED OUT WITH CCT AND FLOMERCA TRAILER SERVICE A SYSTEM OF SMALL, CONTINUING DELIVERIES BY CONTAINER EVERY THREE TO FIVE DAYS OUT OF MIAMI. 17,000 TONS OF EQUIPMENT REMAIN TO BE SHIPPED IN NEXT SEVEN MONTHS. TRAILERS OR CONTAINERS ARE RECEIVED AT SANTO TOMAS, GUATEMALA, IN NUMBERS THAT ONWARD TRANSPORT SYSTEM BY ROAD AND LAKE CAN HANDLE. SHIFT TO DELTA, OFFERING ONE SHIP EVERY 19 DAYS OUT OF NEW ORLEANS, WOULD RESULT IN ARRIVAL SO MANY CONTAINERS IN ONE FELL SWOOP THAT INLAND TRANSPORT WOULD BE SWAMPED, AND STORAGE/TRANSFER COSTS WOULD BE INCREASED SIGNIFICANTLY. MCKEE SHIPPING AND PURCHASING OFFICE IN MIAMI WOULD HAVE BE RELOCATED IN NEW ORLEANS AND A MARSHALLING PLACE ACQUIRED THERE. SERIOUS DELAYS IN ARRIVAL OF EQUIPMENT WOULD BE ENCOUNTERED AT PLANT LIMITED OFFICIAL USE

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SITE, CAUSING FURTHER DELAYS IN COMPLETION OF CONSTRUCTION. EXMIBAL VERY MUCH WISHES TO REMAIN WITH CCT/FLOMERCA TRAILER SERVICE AND NOT HAVE TO SHIFT TO DELTA.

4. BORGATTI SUBSEQUENTLY REPORTED THAT INCO LAWYER IN NEW YORK, SCOTT HAND, HAS LEARNED THAT DELTA HAS NOT YET FORMALLY SOUGHT ANNULMENT WAIVER ON EXMIBAL SHIPMENTS. ALSO THAT IS ANNULMENT SOUGHT, MARITIME ADMINISTRATION WOULD HAVE TO HOLD

HEARINGS BEFORE WITHDRAWING WAIVER.

5. EMBASSY UNDERSTANDING IS THAT REQUIREMENT FOR QPP PERCENT CARRIAGE IN US-FLAG VESSELS MAY BE WAIVED WHEN FOREIGN GOVERNMENT INVOLVED ALLOWS REASONABLE PARTICIPATION BY AMERICAN VESSELS IN TRANSPORTATION OF IMPORTS TO AND EXPORTS FROM THE COUNTRY CONCERNED. GUATEMALA DOES PERMIT SUCH REASONABLE PARTICIPATION IN CARRIAGE OF A) ALL EXPORTS AND B) DUTIABLE IMPORTS. PARTICIPATION BY AMERICAN SHIPS IN IMPORTS INTO GUATEMALA IS RESTRICTED WITH RESPECT TO IMPORTS EXEMPT FROM DUTY UNDER THE INDUSTRIAL DEVELOPMENT LAWS OF GUATEMALA AND THE CENTRAL AMERICAN CONVENTION ON FISCAL INCENTIVES FOR INDUSTRIAL DEVELOPMENT. BORGATTI CLAIMS THAT EXMIBAL CARGO, HOWEVER, IS NOT RPT NOT BROUGHT IN DUT-FREE UNDER EITHER OF THOSE REGIMES BUT RATHER UNDER THE MINING CODE (ARTICLE 6, ACUERDO OF MINISTRY OF ECONOMY, 6/20/68, PUBLISHED IN EL GUATEMALTECO, 7/15/68). ON SUCH IMPORTS FLOMERCA AND OTHER GUATEMALAN LINES NOT RPT NOT SPECIFICALLY GRANTED MONOPOLY RIGHTS; "REASONABLE AMERICAN PARTICIPATION" THUS POSSIBLE.

6. IR REASONABLE PARTICIPATION ON IMPORTS INTO GUATEMALA STILL IN QUESTION, EXMIBAL WOULD ARGUE THAT DETERMINATION WHETHER SUCH EXISTS NOW IS SUB JUDICE BEFORE SPECIAL TRADE REPRESENTATIVE AND FEDERAL MARITIME COMMISSION AND WAIVER ALLOWING SHIPMENT ON NON-US-FLAG VESSELS SHOULD BE RESPECTED UNTIL THOSE BODIES MAKE FINDING OF DISCRIMINATION BY GUATEMALA AGAINST US SHIPPING.

7. BORGATTI IS PROCEEDING TO US AND MAY BE IN WASHINGTON FRIDAY, OCTOBER 17. ANXIOUS ABOUT THREAT TO CONTINUATION OF TRANSPORT SERVICES FROM MIAMI TO EXMIBAL HERE, HE MAY WISH TO DISCUSS MATTER WITH APPROPRIATE USG AUTHORITIES. WILL CONTACT GUATEMALAN DESK, ARA/CEN, FOR ADVICE WHOM TO SEE.
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8. IT MIGHT BE NOTED IN ABOVE CONNECTION THAT DELTA NO LONGER SOLE US-FLAG LINE OFFERING REGULAR SERVICE TO GUATEMALA. AS DEPARTMENT AWARE, SEA-LAND HAS BEEN GRANTED LICENSE, THOUGH CANNOT PLY BETWEEN MIAMI AND GULF PORTS/GUATEMALA, IS RESTRICTED TO EAST COAST/GUATEMALA RUN: SEA-LAND CAN, HOWEVER, TRANSHIP TO GUATEMALA VIA ITS CONTAINER TERMINAL IN KINGSTON, JAMAICA. SEA-LAND SERVICE, LIKE DELTA, NOT OF INTEREST TO EXMIBAL SINCE NOT OUT OF MIAMI, NOT FREQUENT ENOUGH, AND WOULD DUMP TOO MANY CONTAINERS ON TRANSPORT SYSTEM HERE FOR EXMIBAL TO HANDLE AT LEAST COST.
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